

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RENEE MARIE RODRIGUEZ,

Defendant-Appellant.

UNPUBLISHED

January 10, 2012

No. 301575

Saginaw Circuit Court

LC No. 10-034470-FH

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Defendant appeals as of right from her conviction by a jury of third-degree fleeing and eluding a police officer, MCL 750.479a(3). The trial court sentenced her to 270 days in jail and 5 years' probation. We affirm.

On June 18, 2010, at approximately 3:30 a.m., Michigan State Police Troopers Paul Oster and Jeffrey Jerome, noticing a defective headlight, attempted to initiate a traffic stop of a vehicle driven by defendant. They pulled behind defendant at a stop sign, turned on the patrol car's flashing red light, and trained two spotlights on defendant's vehicle. Defendant made a right turn, then proceeded to accelerate quickly, reaching speeds of 50 to 60 miles an hour (in a 35 mile-per-hour zone) in the short chase that ensued. Oster turned on the patrol car sirens when defendant accelerated, and the officers followed defendant closely for approximately a half mile. When defendant slowed, Oster used his vehicle to force defendant's vehicle to stop. Oster pulled defendant from the driver's seat as she attempted to restart the vehicle and promptly arrested her.

Defendant argues that the prosecutor presented insufficient evidence to support her conviction. We review a challenge to the sufficiency of the evidence de novo. *People v Chapo*, 283 Mich App 360, 363; 770 NW2d 68 (2009). "In evaluating defendant's claim regarding the sufficiency of the evidence, this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Further, "[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (internal citation and quotation marks omitted).

In order to sustain a conviction of third-degree fleeing and eluding a police officer, the prosecutor must prove six elements beyond a reasonable doubt:

(1) the law enforcement officer must have been in uniform and performing his lawful duties and his vehicle must have been adequately identified as a law enforcement vehicle, (2) the defendant must have been driving a motor vehicle, (3) the officer, with his hand, voice, siren, or emergency lights must have ordered the defendant to stop, (4) the defendant must have been aware that he had been ordered to stop, (5) the defendant must have refused to obey the order by trying to flee from the officer or avoid being caught, which conduct could be evidenced by speeding up his vehicle or turning off the vehicle's lights among other things, and (6) some portion of the violation must have taken place in an area where the speed limit was thirty-five miles an hour or less, or the defendant's conduct must have resulted in an accident or collision, or the defendant must have been previously convicted of certain prior violations of the law as listed in MCL 750.479a(3)(c). [*People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999).]

Defendant challenges the sufficiency of evidence only with regard to the fourth element, i.e., that defendant must have been aware that she had been ordered to stop.

Defendant focuses on certain isolated portions of Oster's testimony. First, defendant asserts that Oster admitted that defendant "could not initially see the lights on the front of his vehicle," given the juxtaposition of the two vehicles. It is true that Oster testified that defendant would not have been able to see his vehicle's "headlights blink on and off" as she was stopped at a stop sign. However, Oster also testified that the overhead flashing red light, as well as two spotlights fixed on defendant's vehicle, would have been immediately visible when the patrol car pulled up behind her. As Trooper Jerome testified, defendant's car was "well lit up."

Defendant also argues that defendant did not look in her rearview mirror. This is an inference based on Oster's testimony, but is not the only conclusion that can be reached. What Oster testified to in the portion of the transcript cited by defendant is that he could not tell if defendant was looking in her rearview mirror. It does not necessarily follow, particularly when viewing the evidence in the light most favorable to the prosecutor, that defendant was not doing so and had not done so.

Defendant is correct that Oster testified that defendant told him she did not stop because of loud music, presumably inside her vehicle. However, the officer also testified that he did not hear loud music at any time. Moreover, even if defendant could not hear the patrol vehicle's siren, loud music would not obscure the bright lights trained on her vehicle.

It is reasonable to conclude, as Oster opined, that the patrol car's flashing red light and two spotlights, which were fixed on defendant's car, would have been visible to defendant as soon as the troopers initiated the stop. That defendant was aware of the officers' presence is further evidenced by defendant's acceleration away from the officers and her speeding. Finally, when defendant began accelerating, Oster turned on the patrol car's sirens, which Trooper Jerome agreed are "very loud." Viewing the evidence in the light most favorable to the

prosecutor, the jury could have easily found sufficient evidence showing that “defendant [was] aware that [s]he had been ordered to stop.” *Id.* Reversal is not warranted.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter